

A HEALTHY START?

Experiences of pregnant refugee and asylum seeking women in Scotland

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Introduction and background to the study

Glasgow has been home to an increasing number of asylum seekers since it became one of the main UK dispersal cities, in 1999 (Wren, 2007). Due to the fluid situation determined by the asylum seeker status, there are no definite figures on the number of asylum seeking women¹ who are at various stages of the asylum process. However, based on 2011 figures, the total number of asylum seeking women in Scotland is between 6,000 and 10,000 (Da Lomba & Murray, 2014).

The vast majority of these women are at the intersection of multiple vulnerabilities: their precarious immigration status adds to the traumatic experiences from which they are fleeing and to the gender-specific violence they may have encountered (Chantler, 2012). Asylum seeking women whose claims have been refused² also face, in addition to curtailed support and assistance, a highly uncertain future and the possibility of being sent back to the country they have fled, which results in destitution and poor physical and mental health (Kelley & Stevenson, 2006).

The already challenging situation asylum seeking women face can become particularly difficult if they are pregnant (Feldman, 2013).

For many women, as well as not having access to a supporting network of family and friends, there is the added challenge of having to confront an unfamiliar system in a language they often cannot understand or speak (Zadik, 2013). Available literature also shows that front line staff's lack of information on asylum seeking women may hinder awareness of available services (Kelley & Stevenson, 2006).

Knowing what their entitlements are and how to navigate the asylum system, gaining access to economic and social support, as well as adequate maternity care and emotional support represent significant challenges for pregnant asylum seeking women, and particularly so for refused asylum seekers (Da Lomba & Murray, 2014). It is very important to note that the effects of destitution and poverty have been linked to increased risk of poor health and mental health issues for asylum seeking mothers, and also to their infants' low birthweight, with a consequent increase of morbidity and mortality for the babies (Maternity Action, 2013; Maternity Action and ASAP, 2015).

While asylum and immigration are reserved matters, and the laws and regulations which determine the outcomes of asylum claims are decided by the UK government, the provision

¹ To avoid a repetition that would make the report style cumbersome, the term 'asylum seeker/seeking' will be used in this report to include both women who are still awaiting a decision and also women whose claim has been refused, who may have appealed against the refusal, submitted new evidence or seeking judicial review. However, if/when significant for the discussion the 'refused' status will be highlighted.

² We do not use the term 'failed' asylum seeker as this term implies deficiency on the part of the individual who made the claim, rather than the consequence of a decision made by the Home Office and over which the individual has little control.

of healthcare (including maternity care) is a devolved matter. The National Health Service (NHS) in Scotland provides free healthcare for all of those who are ordinarily resident in Scotland, regardless of their immigration status. Ensuring that pregnant asylum seekers are aware of their entitlements and also of the support available locally is essential in order to ensure that they do not become isolated, disoriented and destitute.

As Da Lomba and Murray (2014) note, evidence shows that asylum seeking women living in Glasgow are often unaware of their entitlements, and that information about the financial and practical support available to them is not always effectively provided. The patchy and intricate nature of the support provided by the Home Office, and the equally opaque nature of provision available from local authorities' social work teams, means that it can be very difficult, if not impossible, for women to make the practical steps to access the support available.

Aims of the study

In the light of the current situation faced by pregnant refugee and asylum seeking women, this study aimed to:

- > Identify current roles and responsibilities of statutory services in Glasgow, and any challenges and gaps in the provision of these services.
- > Identify the impact of these challenges on asylum seeking women.
- > Highlight ways in which the situation of pregnant asylum seeking women may change as a result of the new Immigration Act 2016.
- > Make recommendations with a view to ensuring effective policy and practice that would address challenges and alleviate the difficulties experienced by this group.

Research questions

The research questions that guided the study were the following:

- > What are the roles and responsibilities of different statutory and voluntary services in relation to pregnant asylum seeking women and refused asylum seeking women?
- > What is the impact of current forms of support on pregnant asylum seeking women and refused asylum seeking women?
- > Are there gaps in the provision of maternity services for pregnant women seeking asylum? If so, what are they?

Asylum seeking women and maternity services: Insights from recent literature



Insights from recent literature

Asylum seekers are one of the most vulnerable groups in British society (Da Lomba and Murray, 2014). They can wait for a decision regarding their status for months, often years. During this time they have no right to work³ and the support they receive is minimal. They live in fear of being detained and returned to the country they fled. They are often isolated and living in areas which they did not choose but to which they were dispersed according to Home Office rules. As a consequence, they often cannot rely on a network of trusted people to support them and are dependent on statutory services and/or third sector agencies for all their needs (Maternity Action, 2013). However, when unaware of these services or unable to access them, the women can become reliant on networks of informal support that leave them vulnerable to invisible forms of exploitation and abuse. As reported in the newspaper 'The Herald Scotland' on the 20th March 2016, destitute women with no support systems in place can be forced into prostitution and domestic servitude, which can, as a consequence, lead to depression and suicidal thoughts.⁴

The situation is even more challenging for refused asylum seekers, those whose asylum claim has been rejected by the Home Office. The expectation is that refused asylum seekers will leave the UK and therefore they are entitled to support only if they otherwise face destitution. However, in order to qualify for S.4 support, they must fulfil the following criteria (for a more detailed description of these criteria see page 13)

- > be destitute, or be likely to be destitute within the next 14 days (or 56 days if they are already receiving support); and also
- > satisfy one of the following conditions:
 - having applied for judicial review;
 - demonstrate that they are taking all

necessary steps to leave the UK (or provide proof that there is a medical condition where the person is not fit to travel or no viable route of return); demonstrate that not being given accommodation would entail a breach of their human rights (ASAP, 2011).

The complex requirements and relating paperwork needed in order to receive support, together with the fact that the decision on whether to grant support takes time, can result in periods of destitution (Allsop et al., 2014) even for asylum seekers who are later granted refugee status. Effective and quick decision-making is therefore essential to ensure that asylum seekers in need of support are not left destitute.

Among asylum seekers and refused asylum seekers, pregnant women and women who have recently given birth are a particularly vulnerable group. Their pregnant or puerperal condition combines with the challenges posed by their immigration status and creates for many a situation which is very difficult to withstand and which can lead to physical and mental health issues for both the women and their children (Da Lomba and Murray, 2014). As Vertovec (2007) points out: "[...] differential legal statuses and their concomitant conditions, divergent labour market experiences, discrete configurations of gender and age, patterns of spatial distribution, and mixed local area responses by service providers and residents." Vertovec coined the term 'super-diversity' to refer to the dynamic interaction of these variables, one that is reflected in a range of policies and provisions that are increasingly multifaceted and fragmented. The ensuing tangle of rights and entitlements can leave service providers, even those who work with asylum seekers on a regular basis, baffled and uncertain.

³ According to current rules, asylum seekers who have waited for longer than 12 months for their decision, and who meet the skills shortage list of the UK, are allowed to work. In practice, these restrictions mean that the number of asylum seekers who can find employment is extremely small.

⁴ See: The Herald Scotland (20th March 2016) Red Cross warns of humanitarian crisis as destitute refugee women forced into prostitution. Available from: http://www.heraldscotland.com/news/14371141.Red_Cross_warns_of_humanitarian_crisis_as_destitute_refugee_women_forced_into_prostitution/

Research by Phillimore (2015) argues that contemporary migration sees individuals arriving from different countries and who are also differentiated by gender, age, class. These social categories are made even more complex by the different immigration schemes and by the associated variety of rights and entitlements. Moreover, the migrants are now more fragmented and arrive in smaller groups than in the past.

Phillimore (ibid.) refers to the 2007 Confidential Enquiry into Maternal and Child Deaths, which highlights that 12% of all maternal deaths in the UK are refugee and asylum seeker women, despite the fact that these women only make up 0.3% of the female population. Phillimore also adds that “[...] a number of the key asylum seeker dispersal and new migrant arrival locations have high levels of infant mortality” (p. 571). Haith-Cooper and Bradshaw (2013) also note that asylum seeking women are at higher risk of poor health and infections (including HIV and STDs), while for some of them female genital mutilation (FGM) can be an added health risk (Maternity Action, 2013; Baillot et al., 2014). Moreover, chronic stress during pregnancy is associated with health risks such as high blood pressure, diabetes, strokes and heart attacks, as well as lower birth weight and prematurity (Haith-Cooper and Bradshaw, 2013). As a consequence of these factors, pregnancy in asylum seekers is more likely to end in unfavourable outcomes for the mother, but also for the unborn child.

The main issues in accessing maternity services faced by the migrant participants in Phillimore’s research were grouped into two main areas. The first referred to language and communication and highlighted lack of (adequate) interpreting; use of family as interpreter; ante-natal classes and information only in English; and impossibility to convey complex medical information. The second area concerned ‘cultural health capital’ and discrimination. This included the assumption that women are familiar with the NHS and its ante-natal practices and procedures and that

they have the cultural health capital needed to understand information and to know when and where to ask for it. Lack of support for NHS staff to enable them to understand and respond to migrant women’s needs was also noted, as were instances of discrimination and misconceptions held by NHS staff (e.g. African women have longer labours so deny pain relief).

Other issues identified by Phillimore were linked to the ‘No Recourse to Public Funds’ (NRPF) policy, which results in women having to live with friends or in temporary accommodation and hence having to move frequently with substantial disruption to their care provision and their well-being. Moreover, she notes how refused asylum seekers and undocumented migrants often lack the resources to travel to appointments and to buy the necessary items for the new baby and they have to rely on charities’, organisations’ or friends’ support.

Issues concerning isolation were also reported by a large number of women in the Phillimore (2015) study and she concludes that “the maternity system, as observed by some of our professional interviewees, appeared to have been designed for a homogenous pregnancy experience and static population.” (p. 579) Furthermore, as Haith-Cooper and Bradshaw (2013) note, evidence suggests that some young people, including students of midwifery, have negative views of asylum seekers, and are not immune to negative public discourses.

A 2013 report by Maternity Action looking into the effects of dispersal on pregnant asylum seekers further stresses how this vulnerable group experience the worst outcomes in pregnancy and health. Midwives and health staff know this and try to remedy it, but the system works against them. The implications are not just limited to health but also impact very negatively on asylum seeking women’s mental health and wellbeing.

Kathy Warwick, the General Secretary of the Royal College of Midwives, notes that “Women need support in pregnancy. They need to be surrounded by a network of friends and family. They need stable and adequate housing. They need good nutrition, rest and exercise. Not only does stress and isolation impact negatively on the mother herself but it is now well known that it impacts firstly on the developing brain of the baby and secondly on the health of the baby after birth. A woman’s mental health impacts on her child’s future life chances” (Maternity Action, 2013, p. 1).

The Maternity Action (ibid.) report highlights the negative impact of dispersal and asylum on pregnant women.⁵ The Home Office moves asylum seekers, including pregnant women, to accommodation outside London and the South East. While waiting for their application to be processed, they are first moved to ‘initial accommodation’. Once the application has been processed, they are moved to dispersal areas elsewhere in the UK. Dispersal can impact on continuity of care and leave a woman isolated from the networks of friends and/or family. It prevents joined-up service provision and leaves women and children vulnerable to gaps and oversights. Upon arrival to the dispersal accommodation women have little support in accessing services and it is left to the third sector to fill in these gaps.

Inadequate financial provision was also highlighted by the report, in particular for women on Section 4 support. The challenges this poses are further exacerbated by the poor standards of HO accommodation, as provided by Orchard and Shipman. As Allsop et al. (2014) note, the Azure card limits peoples’ ability to travel and get essential items (e.g. clothing, toiletries, some over the counter medicines). It is also stigmatising, it does not always work, and it can take a

long time for them to be replaced if damaged or lost. Fear of repatriation or of separation from children means that some refused asylum seekers on section 4 do not access the support they have a right to. In addition, administrative delays mean that support is often late to get underway (ibid.).

The lack of public support means that NGOs and Refugee Community Organisations are left to plug any gaps, providing practical support and the means for inclusion. However, financial cutbacks, lack of coordination and lack of qualified professionals, mean that third sector organisations often struggle to support refugees adequately, in a situation that is increasingly getting more challenging (ibid.).

⁵ Home Office policy (UK Visas and Immigration, ND) states that “Dispersal in the late stages of pregnancy should only be undertaken either at the request of applicant or her treating medical practitioners. If such a request is made, it must be made in writing” (p. 41). It also clarifies that “for the purposes of this policy, the late stages of pregnancy will be defined as normally running from six weeks before the Estimated Date of Delivery (EDD) until a clinician has signed off on the postnatal checks. The latter will usually be around six weeks after birth, unless there have been complications” (p. 40).

Support currently available to asylum seekers



Support currently available to asylum seekers

Asylum is a reserved matter (Section B6 of the Scotland Act 1998) with the consequence that asylum support is provided by the Home Office (UK Visas and Immigration Directorate) across the UK and ‘delivered through a series of contracts with private companies’ (Da Lomba and Murray 2014). Local authorities are prevented from providing support to asylum seekers on account of their being destitute or at risk of destitution. Local authorities’ duties arise in respect of asylum seekers with care needs beyond destitution.

Provisions on asylum support are currently contained in the Immigration and Asylum Act 1999 (the 1999 Act). ‘Asylum support does not form part of the mainstream benefit system provided by the Department for Work and Pensions and as such does not entitle recipients to any additional mainstream support’ (Da Lomba and Murray 2014). Most asylum seekers who are at risk of becoming destitute are the recipients of either Section 95 or Section 4 support, depending on the status of their asylum claim.

Section 95 support is provided by the Home Office to asylum seekers whose claim is still pending. Support is available for asylum seekers or their dependants who are at risk of becoming destitute pending the consideration of their application for Section 95 support (Section 98 of the 1999 Act). In contrast with Section 95 support, Section 4 support is provided to refused asylum seekers. According to Section 95(3), ‘a person is destitute if –

- (a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or
- (b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.’

To satisfy the ‘destitution test’, applicants must show that they will not have adequate accommodation or money to meet their expenses within the next fortnight (Asylum Support Regulations 2000, SI 2000/704 (as amended)).

Section 95 support

Section 95 support is provided by the Home Office to individuals who are at risk of becoming destitute within 14 days. Under Section 55 of the Nationality, Immigration and Asylum Act 2002, asylum seekers are not entitled to support whilst their asylum application is under consideration if they are found not to have applied for asylum “as soon as reasonably practicable”. Asylum must be claimed within 3 days of arrival in the UK. There are some limited exceptions for families, people with special needs and cases where a refusal of support would be a breach of the individual’s human rights (Home Office, Asylum Support Policy Bulletin 75, *Section 55 Guidance*).

Section 95 support must be granted if there are children under the age of 18. Section 95 support consists of subsistence only. Section 95 financial support is provided in cash. Controversial new asylum support rates took effect in August 2015. These changes to support introduced a single weekly rate of asylum support (£36.95 per adult or child). Previously, support rates did vary with asylum seekers’ ages and household compositions. These changes ‘represent a substantial reduction in support for single parents and families with children. For example, the weekly asylum support rate for children under 16 [was] £52.96 [before the new rates took effect] (House of Commons, Briefing Paper, Number 1909, 14 October 2015, ‘*Asylum Support*’: *Accommodation and Financial Support for Asylum Seekers*).

Pregnant asylum seekers and children under the age of 3 remain eligible for additional payments. A pregnant mother has the right to £3 extra per week, to £5 for a baby under the age of 1 and to £3 for each child between the ages of 1 and 3. Asylum seekers are also eligible for a maternity grant of £300; they must apply for the grant from 8 weeks before the due date to 6 weeks after the birth of the baby. In order to apply, asylum seekers will need to be in possession of a Mat B1 form which they should receive from a midwife at the end of the 20th week of pregnancy.

Accommodation is provided on a no-choice basis in dispersal cities, such as Glasgow. Accommodation is provided to asylum seekers by private providers contracted to provide the services on behalf of the Home Office. 'Prior to dispersal, asylum seekers are usually housed in hostel-style accommodation (known as 'initial accommodation') on a short-term basis while they make an application for financial assistance' (National Audit Office, *COMPASS Contracts for the Provision of Accommodation for Asylum Seekers*, HC 880 2013-14). Temporary full-board or self-catering accommodation can be provided under Section 98 of the 1999 Act while a Section 95 support application is pending. This would usually be in their dispersal area and is acceptable under the Home Office Statement of Requirements to provide hotel or hostel accommodation in exceptional circumstances. Red Cross operational experience suggests that this is happening in increasing numbers and is the usual practice. Asylum seekers are moved to more permanent dispersal accommodation once the Home Office has assessed and confirmed their eligibility for support. This will typically be self-catering accommodation. Women asylum seekers may be asked to share with other asylum seeking women; single parent families may also be asked to share accommodation.

Section 4 support

Adult asylum seekers without children who have been refused asylum and have exhausted their appeal rights are no longer eligible for Section 95 support. Section 95 support is normally terminated 21 days from the time a final decision on their asylum claim is made. However, families whose household includes dependants under the age of 18 may continue to receive Section 95 support if their asylum claim is refused until the youngest child turns 18, they leave the UK voluntarily or they are removed (Article 94(5) of the 1999 Act).

Refused asylum seekers may be eligible for Section 4 support. In addition to being destitute, applicants for Section 4 support must satisfy one of the following five conditions:

- > '[they are] taking all reasonable steps to leave the United Kingdom or place [themselves] in a position in which [they are] able to leave the United Kingdom, which may include complying with attempts to obtain a travel document to facilitate [their] departure';
- > '[they are] unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason;
- > [they are] unable to leave the United Kingdom because in the opinion of the Secretary of State there is currently no viable route of return available;
- > [they have] made an application for judicial review of a decision in relation to [their] asylum claim (...); or
- > the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998' (Regulation 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005).

Destitute and unable to leave the UK by reason of a physical impediment to travel or other medical reason' is the condition that is frequently the most relevant to pregnant refused asylum seekers. This provision can only be invoked up to 6 weeks before or after the due date, unless there are certified complications. Asylum seekers on Section 4 support have a right to free NHS care in Scotland.

Section 4 support is cashless; accommodation and an 'Azure' payment card are provided. Asylum seekers on Section 4 support currently receive £35.95 per person in the household which is credited on their 'Azure' card. A pregnant mother has the right to £3 extra per week, to £5 for a baby under the age of 1 and to £3 for each child between the ages of 1 and 3. Refused asylum seekers are also eligible for a maternity grant of £250; they must apply for the grant from 8 weeks before the due date to 6 weeks after the birth of the baby. To be able to apply, the asylum seeker needs to get a Mat B1 form from a midwife or GP.

Support for asylum seekers with care needs and the duties of local authorities

Understanding the responsibilities of a local authority in meeting the care needs of pregnant migrant women and their families is an area of complexity, particularly for those who have “no recourse to public funds” but are in vulnerable situations where their human rights may be at risk.

Therefore as part of this research a legal opinion was sought to explore the duties of local authorities in Scotland to meet the care needs of pregnant asylum seeking women, or pregnant migrant women with no recourse to public funds. This section draws upon the opinion of senior counsel Janys M Scott QC.

It is a complex area, however what can be surmised from the opinion by Janys M Scott QC is that a local authority can exercise their powers or perform their duties to avoid a breach of the person’s Convention rights even in cases where restrictions on eligibility are in place due to immigration and asylum legislation.

In the opinion of Janys M Scott QC she outlines the duties and restrictions of local authorities to promote social welfare through Section 12 (1) of the Social Work (Scotland) Act 1968. She notes that restrictions on eligibility for support under Section 12 are imposed by the Immigration and Asylum Act 1999 and the Nationality, Immigration and Asylum Act 2002 where the needs arise purely from destitution.

She then goes on to consider this in relation to asylum seeking pregnant women or pregnant women who have no recourse to public funds. She opines that if the woman’s need has arisen due to their pregnancy, and not solely as a result of destitution, then the woman can access section 12 assistance. She considers relevant case law including *R (Limbuela) v Secretary of State for the Home Department* [2006] AC396 and *De Almeida v Royal Borough of Kensington and Chelsea* [2012] EWHC 1082. The Limbuela case succeeded in establishing an article 3 claim

against the Secretary of State for claimants who were not provided accommodation and had to rough sleep. The *De Almeida* case was an article 8 case in which the Judge ruled that the refusal of support by the local authority to the claimant, who was suffering from HIV, did not reasonably justify the severe consequences that it would have on him.

She goes on to note the significance of this in relation to support for pregnant women noting:

“Pregnant women are particularly vulnerable. If in this condition the treatment they receive as a result of their immigration status forces them into abusive relationships, or prostitution this brings them into the type of situation considered by the House of Lords in the *Limbuela* case, or if their health and mental stability is threatened, that is capable of giving rise to issues under article 3 or article 8. Separation from support structures is relevant to article 8, as in *De Almeida*.”

Janys M Scott QC notes that in English case law there is repeated reference to “human rights assessments”. The human rights assessments stem from guidance issued by the No Recourse to Public Funds (NRPF) Network for local authorities in England. The guidance and standard human rights assessment form play an important role in ensuring that local authorities meet the obligations of articles 3 and 8 of the Convention which bear upon them.

However, she goes on to note that, in Scotland there does not appear to be any standard form adapted for the Scottish context to assist Scottish local authorities in complying with their Convention duties.

She states that it is unlawful under section 6 of the Human Rights Act 1998 for a public authority to act in a way that is incompatible with a Convention right and reiterates that “schedule 3 to the Nationality, Immigration and Asylum Act 2002 does not prevent the exercise of a power or performance of a duty if, and to the extent that, its exercise is necessary for the purpose of avoiding a breach of the person’s Convention’s rights”.

She notes that “A decision by a local authority in relation to provision, or non-provision of support under section 12 of the Social Work (Scotland) Act 1968 that violates the article 3 or article 8 rights of a pregnant women would be open to judicial review”. She goes on to state that “it is also possible to claim damages under sections 7 and 8 of the Human Rights Act 1998 in the event of injury caused by an act that is unlawful because of a violation of Convention rights.”

To conclude Janys M Scott QC opines:

On the basis that a pregnant woman requires assistance as a result of her pregnancy (as opposed to requiring assistance solely as a result of destitution) then the following pregnant women will, in ordinary course, be eligible for support under section 12 of the Social Work (Scotland) Act 1968:

- > A woman who has applied for asylum and is awaiting the outcome of her application;
- > A woman whose asylum application has been refused, but who has not failed to co-operate with removal directions;
- > A woman whose asylum application has been refused, but who has one or more dependent children, provided the Secretary of State has not issued a certificate that she has failed to leave the United Kingdom voluntarily or to place herself in a position where she is able to leave voluntarily, or if there is such a certificate less than 14 days have elapsed since she received a copy.

In the case of pregnant women lacking accommodation and necessities she opines that section 12 assistance cannot be given in ordinary course to those who are subject to restrictions as set out in section 54 and schedule 3 of the Nationality, Immigration and Asylum Act 2002.

She goes on to state that:

“In such cases section 12 support is only available to avoid a breach of the person’s Convention rights. A pregnant woman, particularly one in the later stages of pregnancy, who lacks accommodation

and necessities, is likely to be owed a duty to provide these to her in order to avoid a violation of her rights under article 3 and potentially article 8 of the European Convention of Human Rights.”

The opinion also explores the support available to pregnant women who already have children. Janys M Scott QC notes that under Section 22 of the Children (Scotland) Act 1995 local authorities have a duty to promote the welfare of children in need. Through this legislation local authorities can provide services for children in need, which may result in a mother receiving services with her child.

While an adult, who due to their immigration status is ineligible for support under Section 12 of the Social Work (Scotland) Act 1968, is also ineligible for support under Section 22 of the Children (Scotland) Act 1995, this does not apply to prevent the provision of support or assistance to a child, and any decision should be made with the best interests of the child as a primary consideration.

In this case Janys M Scott QC opines:

“The local authority may provide services designed to safeguard and promote the welfare of children under the Children (Scotland) Act 1995. This may incidentally have the effect of conferring benefits on a pregnant parent. The women excluded from assistance under section 12, save on human rights grounds, cannot be given assistance under section 22 of the Children (Scotland) Act 1995 (save on human rights grounds), but their children may be assisted. In such cases the parent may be able to argue that accommodation of the child without allowing the parent accommodation with the child could be a violation of the right to respect for family life in terms of article 8 of the Convention.”

To conclude in the opinion of Janys M Scott QC local authorities in Scotland are able to provide assistance to pregnant migrant women in order to prevent a breach of their rights under the European Convention of Human Rights.

Currently there does not appear to be a standard process in place in Scotland to assist local authorities with a human rights assessment for people who fall within the No Recourse to Public Funds category.

New Immigration Act 2016

The Immigration Act 2016 contains changes to current provisions on support which will impact directly asylum seeking families and pregnant asylum seeking women. While the full impact of the Act is not yet known 'The Government's intention, as indicated in the Home Office factsheet for this part of the Bill, is that the measures will "reduce the scope for ... support to remove incentives for failed asylum seekers to remain in the UK illegally" (Melanie Gower, *'Asylum support': accommodation and financial support for asylum seekers*, House of Commons Library, Briefing Paper, Number 1909, 14 October 2015, p. 17).

In particular, the Act replaced section 4 support with a new form of support - 'Section 95A' - , which will only be available to destitute refused asylum seekers - including asylum seeking families - who face a 'genuine obstacle' to leaving the UK. The term 'genuine obstacle' will be defined in regulations. The changes will not apply retrospectively and the Act provides for transitional measures to 'ease' the loss of entitlements.

Refused asylum seekers without children – including pregnant asylum seekers – will only have a grace period of 21 days from the time a final decision has been made on their asylum claim. It remains the case that asylum seekers who do not qualify for Section 95A support will not have access to support and will therefore face destitution. Crucially, there is no appeal against decisions to refuse Section 95A support.

While the UK Government is aware of the risk of destitution, it takes the view that refused asylum seekers can avoid destitution by returning to their countries of origin. However, most people, who have a genuine obstacle to travel will, therefore, become destitute as they will not be experiencing this obstacle i.e. end stage of pregnancy during the grace period.

This will mean that pregnant women will go through their whole pregnancy destitute. We will examine later how the proposed changes could impact on the welfare of some of the women we have interviewed.

There will continue to be a right to appeal decisions which refuse Section 95 support; however, the right to appeal decisions that discontinue Section 95 support is repealed. Local authorities in Scotland will remain bound by their duties under the Children (Scotland) Act 1995 and the Social work (Scotland) Act 1968 (as amended) in respect of asylum seekers with care without central government.

The Immigration Act 2016 maintains the principle that asylum support should be provided within a UK-wide framework and provided centrally by the Home Office. Thus local authorities are still prevented from providing support solely aimed at 'combatting' destitution. Local authorities' duties essentially arise in respect of asylum seekers with care needs, including asylum seekers with care needs under the Children (Scotland) Act 1995. However, as we write this report, the UK and Scottish Governments are 'discussing the possibility of introducing different powers for the provision of financial support and accommodation and advice to asylum seekers in Scotland' (House of Commons, Briefing Paper, Number 1909, 14 October 2015, *'Asylum Support': Accommodation and Financial Support for Asylum Seekers*).

In the next sections we discuss the main issues that pregnant asylum seeking women experience, as identified in the course of the study by the women themselves and by service providers. Following this, we will illustrate some of the reasons we identified which can cause or exacerbate the issues highlighted. We then look at the way in which the new Immigration Act may impact on (refused) asylum seeking women and at the consequences for local service providers. We conclude with a list of recommendations, in the understanding that local services may, in the near future, be required to review their role in relation to this particular group.

Methodology and sample



We interviewed a total of 24 participants: 15 asylum seeking women who were either pregnant or had given birth in the previous 12 months, and 9 service providers, both from statutory services and the voluntary sector. Data was collected through in-depth, semi-structured interviews. The majority of the interviews were carried out on a one-to-one basis, usually at the women's home or at the service provider's offices. On a couple of occasions two people from the same organisation were interviewed together, and an interpreter was present during the interview with 8 of the asylum seekers.

Both women and service providers were informed in writing about the project aims and what it would entail. The information for the asylum seeking women was translated as appropriate. Further explanation was given in person prior to the interviews and all the participants were required to sign a consent form. With the participants' consent, the interviews were audio-recorded and the transcripts analysed for emerging themes.

The following section provides an overview of the participants including some detail on the asylum seeking women's current situation in relation to their immigration status, stage of their pregnancy, support given by the Home Office, and whether they had experienced destitution at any point during their pregnancy. A summary is also given in a table format. The names used throughout this report are pseudonyms, and some of the participants' details (e.g. nationality, particulars of the asylum case, language, length of residence in Glasgow) are withdrawn in order to ensure participant anonymity.

Participants: asylum seeking women

A total of 15 asylum seeking women took part in the study. Their countries of origin were quite diverse, and included African countries, the Indian Sub-continent and the Far East. Their length of stay in the UK was varied, ranging from more than a decade to just a few months.

Of the 15 women interviewed, seven had been refused asylum and were awaiting the result of an appeal or had lodged a new claim. The remaining participants were still going through the asylum process, usually waiting for their substantive interview. Five women were still pregnant at the time of being interviewed, while the remaining ten had babies whose age ranged between six and 12 months. Five women had other children either living with them in the UK or in the country of origin.

The women had accessed NHS services and had been in touch with third sector organisations at some point during their pregnancy. While most of the women we interviewed were being supported by the BRC's Mum's Service, four of them had not yet accessed any specific non-NHS service for pregnant asylum seeking women.

Of the 15 women interviewed, 10 were receiving cash support, three women were in receipt of Section 4 support and two of the women interviewed had no Home Office support. While this meant that one was destitute at the time of our interview, and was surviving on food handouts, the second lived on her husband's salary, as he had been granted leave to remain in the UK. Destitution was – or had been – an issue during pregnancy for four out of the 15 asylum seeking women interviewed.

We acknowledge that the small sample limits representativeness and do not wish to suggest that the numbers illustrated above are indicative of patterns of recurrence among the wider population of pregnant asylum seekers. However, the sample's characteristics were varied enough to allow for an overview of the potential challenges women may face according to their situation in relation to: the asylum process; the forms of support they are entitled to; the presence of other children; their length of stay in the UK; the availability of networks of support; and their ability to navigate the different services available within Glasgow, also in relation to language skills.

The following table gives an overview of the asylum seeking participants:

Pseudonym	Immigration status	Experienced destitution?	Pregnant?	Baby?	Other children?	Support
Poppy	Asylum Seeker	==	Yes	==	Yes	S95
Amber	Asylum Seeker	==	==	Yes	Yes	S95
Lilly	Refused AS Appeal	==	==	Yes	No	S95
Margaret	Refused AS Fresh claim	Yes	==	Yes	Yes	S4
Daisy	Refused AS Fresh claim	Yes	==	Yes	No	S4
Rose	Refused AS Appeal	==	==	Yes	No	S95
Jade	Asylum Seeker	==	==	Yes	No	S95
Chrystal	Refused AS No further info	==	==	Yes	Yes	S4
Ruby	Asylum Seeker	==	==	Yes	No	S95
Coral	Asylum Seeker	Yes	==	Yes	Yes	S95
Pearl	Refused AS No further info	==	==	Yes	Yes	S95
Faith	Refused AS Fresh claim	==	Yes	==	==	None (husband)
Hope	Asylum Seeker		Yes	==	No	S95
Grace	Refused AS Appeal	==	Yes	==	No	S95
Joy	Refused AS Fresh claim	Yes	Yes	==	No	None

Participants: service providers

We spoke to 11 members of staff working for nine different service providers. Of these, five were statutory services (NHS and Glasgow City Council) while four were third-sector organisations. Between them, the services covered several areas of support that are available to pregnant asylum seeking women: health (including through the Asylum Health Bridging Team); maternity services; housing; relief for destitution; support with the asylum process; social services; women and children support services.

We did not manage to speak to a representative of midwifery services, despite the fact that this was indicated by almost all participants, both the women and the service providers, as the most supportive of pregnant asylum seeking women. While it is possible that the overwhelmingly positive reviews this service received were due to the strengths and conviction of a specific individual, this is a service that plays an extremely important role in the women's experiences, and therefore we are aware that not being able to include the knowledge gained by midwifery services, despite our repeated efforts, leaves a gap in the study.

Findings



Findings

Mental health and wellbeing

About two-thirds of the women interviewed were tearful during the interview and several cried throughout. Several women disclosed instances of diagnosed depression and episodes of anxiety. Two spoke openly about having attempted suicide. We do not have a figure for the number of women we interviewed who are receiving mental health support, as we did not directly ask for this information. At times the mental health issues were pre-existing as some women have escaped harrowing situations.

“[The pregnancy] actually added to everything else, like ‘what am I going to do! I can’t work, I can’t do anything, I’m having a baby... do you know what I mean?’”

(Daisy)

For other women the asylum process itself is the cause of anxiety and stress. Inevitably the interview led the women to discuss feelings of isolation and loneliness and to reveal their lack of control over their - and their children’s - present and future. They recounted instances of discrimination in their everyday lives. This meant that most women broke down during the interviews, revealing pain and anguish that were not always obvious at first. In several of the flats we visited during the course of our interviews, the curtains were drawn even in the middle of the day, a way to keep the outside world out and to shield oneself from it.

“I just want to feel alone. I just want to be with my children”

(Poppy)

The findings of the study supported the evidence that depression and anxiety can drastically limit asylum seekers’ ability to engage in activities outside the home, thereby reducing their opportunities to integrate and engage with the local community (Phillimore, 2011). High rates of mental health problems among pregnant asylum seekers have also been highlighted by other reports on this group (e.g. Maternity Action, 2013; Scottish Government, 2013). Depression can result in isolation not just for the women but also for their babies and for other children they have.

Isolation

The study found that isolation appears to be a vicious circle for pregnant women in the asylum system. Lack of social networks of support can impact on a woman’s mental health, causing further withdrawal from social connections. The overwhelming majority of the women we spoke to had little or no social systems of support. Isolation is a major problem generally for asylum seekers, as dispersal can sever the existing ties they may have in the UK and poverty dramatically limits their access to friends or family.

In the case of a pregnant woman, the lack of social support structures, being alone at birth and having little or no English language skills in which to communicate with hospital staff means that it is difficult to understand what is happening and whether everything is going well during childbirth. For first time mothers this can be a particularly challenging time, even more so as all the women we spoke to had not attended any antenatal class and therefore had little idea about what to expect.

“I was hospital for 4 days as I had a C-section. The social worker tried to get O&S to change my accommodation to a ground floor flat but did not manage [cries quite heavily at this point]. While in

hospital, I also had problem with the wound as it was not healing properly [goes out to get some tissues]. I was very scared. I went home from hospital on my own. I had to do the shopping... Sorry, I don't want to think about it'

(Amber)

Relieving feelings of isolation and loneliness was a priority for several of the service providers interviewed, but in particular for the health visitor following up on new mothers and babies wellbeing and for those in the voluntary sector. The British Red Cross Mums Project offers a Doula (i.e. birthing companion) service for women who do not have family or friends nearby who can be at the birth with them. The women who had used this service were very positive about it.

In some of the areas which house significant numbers of asylum seekers, schools, local churches and community groups seem to be very active in trying to relieve isolation and to provide means for pregnant asylum seekers and new mums to get to know others and to build social connections. However, as one of the NHS employees noted, these groups rely on individual strengths and motivation and receive no support or recognition for the important role they play in supporting asylum seeking women.

"The schools are very aware of some of the issues and they're sensitive... not that they are not caring for every child but, you know... some of these issues... wee Jimmy is not worried about being deported and immigration coming for them..."

(NHS employee)



Margaret

Margaret has a strong Glaswegian accent. She has lived in the UK for most of her life. She holds her young baby as we speak, while her other young child watches TV. Margaret and her children are on Section 4 support. She talks about the difficulties this means for her, how receiving money on the Azure card means that she cannot buy her two-year-old an ice-cream when they go out, nor take her swimming or into town. Not able to move if not in the immediate neighbourhood, Margaret and her children spend most of the time in the flat, where the curtains are drawn even at lunchtime.

While life on Section 4 support is difficult, things have been much worse. Margaret was not granted Section 4 support for several months during the course of her first pregnancy. At the time, Margaret was therefore destitute, surviving on free food from food-banks and sleeping on other people's floors or on bug-infested beds. She attempted suicide, and is still suffering from poor mental health. She was brought to the attention of the British Red Cross' Mums Project who helped her out of destitution and into Section 4 support. The support she receives is from the Home Office is far from ideal, but at least she has a safe place for herself and her children and enough food on the table.

women whose claim and appeals have been refused, Section 4 support only becomes available if they meet one of the criteria already discussed on page 13 of this report.

Moreover, if a person has lived in the UK for a long time prior to applying for support (as was the case for Margaret and Daisy) there can be substantial delays in the provision of support. Proving destitution is increasingly difficult and the complexities of the information and documentation required means that often pregnant women may have no form of support for extended periods of time (see also ASAP, 2011b).

Home Office support also allows for extra provision in the case of pregnant asylum seekers or when children are present in the family. This includes additional money for each child, a maternity grant and a starter pack for new mums. The Home Office also currently provides support for pregnant asylum seeking women and for families with children who have had their claim refused. Current Home Office support is, however, below the poverty line and several studies (e.g. Allsop, et al. 2014; Maternity Action, 2013; Phillimore and Thornhill, 2011) have highlighted the effects of this on pregnant asylum seeking women and their children as they are severely limited in relation to the food they can buy (both in quantity and quality). Several reports and investigations, including a legal challenge by Refugee Action have suggested an increase in state support for vulnerable asylum seekers, but these calls have not been heeded. On the contrary, as of August 2015 rates of support have been cut⁸ and the Immigration Act is bound to reduce access to support even further.

Destitution and Asylum Support

If at risk of destitution, asylum seekers may be able to access either Section 95 (cash) support or Section 4 (cashless) support.⁶ Both forms of support include subsistence money and free accommodation. However, for

Third sector employees working with this group of clients have highlighted an emerging pattern which would seem to indicate that the reduction of support is already impacting family's needs such as lower access to

⁶ More detail on the forms of support available is given on pages 12-13 of this report.

⁷ http://www.refugee-action.org.uk/about/media_centre/our_news/1248_home_office_announces_asylum_support_rates_will_remain_unchanged_following_review_despite_legal_challenge

⁸ From August 2015, a flat rate of £36.95 per person has replaced the previous rates (£36.62 - single adult; £43.94 - lone parent; £52.96 - child under 16; £39.80 - child 16-18). For more information, see: <http://www.nrpfnetwork.org.uk/News/Pages/asylum-support.aspx>

adequate food, clothing, baby books and toys. The asylum seekers affected are referred to other charities, but the situation could deteriorate further as more and more people fail to receive adequate support, and strain the third sector beyond what it can cope with. This is a development that will need to be carefully monitored and further research may be needed.

Moreover, even when asylum seeking women and families are entitled to Home Office support, they may experience delays, sometimes quite substantial, in receiving the additional cash that allows them to meet the increased financial strain of having to provide for a new baby, as this quote exemplifies:

“We are in the process of monitoring time scales for these but are in the early stages of gathering this info. However, we do have one or two cases where we can give clear examples of time scales (both reasonable time scales for one client and unreasonable for two others).”

(Third Sector employee)

The British Red Cross (BRC) Mums Project is a Glasgow based programme aimed at supporting vulnerable female refugees and asylum seekers during their pregnancies and in the post-partum period.⁹ Everyday experience by staff working with pregnant asylum seekers at the Mums Project appears to show that there can be significant waiting times in the processing of financial support for pregnant asylum seekers and their babies. While thorough research is needed to determine the extent of the delays the

women experience, it appears to be a common issue, one that has been a topic of discussion on a UK wide Google Group around asylum support.

The delays concern the processing of additional support applications for pregnant women; of maternity grants; and of the weekly asylum support for new babies. The BRC has started to monitor the times required for the handling of these applications, and a preliminary result indicates that, while quite variable, delays can be lengthy, and in several cases women had to wait 8 or 9 weeks between sending the baby's birth certificate to the Home Office, as required, and the start of the financial support for the new-born child.

A significant number of women that have been seen through the BRC's Mums Project in recent times had not yet received their maternity grant at the point of giving birth, preventing them from being able to prepare for the baby's arrival and forcing them to rely heavily on charitable donations to meet all the needs of a new-born child.

Additionally, the significant waiting times for start of the baby's asylum support means that new asylum seeking mothers need to pay for items such as nappies, formula milk etc. from their already limited weekly support.

In a few cases reported by the BRC Mums Project, women who made their application within 6 weeks of due date and submitted their MATB1 form (which is provided by the midwife and states the due date) as required were subsequently told to send birth certificates after the baby's birth, causing even further delays.

⁹ For further information see: <http://www.redcross.org.uk/Donate-Now/Make-a-major-donation/Trust-donations/Lottery-projects/Mums-Project-Glasgow>



British Red Cross Mums Project employee. Obtaining maternity support: A case study.

A case study representative of the delays in the provision of financial support that asylum seekers face during pregnancy and the post-partum period was highlighted in the course of an interview with a BRC Mums Project employee and is reported below. The Mums Project employee interviewed noted that this particular case is emblematic as the waiting times recorded are neither the lengthiest nor the shortest their staff experience as part of their work with pregnant asylum seekers.

“The client was a single mother expecting her first baby. She spoke very little English and required the BRC Mums Project help to deal with the paperwork needed for support.

29 weeks into her pregnancy, the client and a Mums Project employee called Migrant Help (MH) to request an envelope so that the client could send her MATB1 form as required in order to apply for the £3 weekly additional payments. The envelope arrived 3 days later and, with assistance from the Mums Project staff, the client was able to send the MATB1 to Migrant Help in order for it to be forwarded to the Home Office. At 30 weeks of pregnancy, one week after sending the MATB1 to MH, the Home Office received the client’s application from.

At 36 weeks into her pregnancy, the client applied for the £300 maternity grant via MH, with the help of the Mums Project. The application was made two weeks later than it could have been as the client had not understood what she needed to do until her case had come to the attention of the Mums Project.

At 38 weeks of pregnancy the client’s baby was born, two weeks earlier than the due date. At this time, the Home Office received the maternity grant application from MH, a fortnight after the application was submitted.

One week after the baby’s birth, the client seemed very anxious and worried about the support she was receiving. She was very confused about what she was supposed to do and could not understand why she was not getting any additional support for her baby. The client told us that she could not breastfeed her baby as she was not producing enough milk, and so she needed to buy formula, which is rather expensive. She was also struggling to afford nappies. Two weeks after the baby’s birth, the client requested an envelope from MH in order to send the baby’s birth certificate. She also registered the baby’s birth.

Four weeks after applying for it, the client finally received her maternity grant. The additional £3 weekly payment also came through at the same time, 11 weeks after the application was made. The £3 payments were backdated to the date of the application.

Six weeks after the birth, the baby’s asylum support was finally added to the client’s weekly support. This was backdated to the time at which the Home Office had received the baby’s birth certificate and not to the time at which it was sent.

In the course of the process of applying for the support to which she was entitled, the client and a Mums Project employee called Migrant Help six times, and each phone call usually lasted around 45 minutes. The Home Office was also called twice (but no-one replied) and two emails were sent to the Home Office. While waiting for her support to come through, the client had to rely on charitable donations of maternity clothes, baby items, toiletries, financial support to get a taxi to hospital.”

The BRC Mum's Project case study, raises important questions about the complexities and delays of the process pregnant asylum seekers and new mums have to go through in order to access the support to which they are entitled. Further, it begs the question of how the client that was supported by the Mums Project would have managed had she not come to the attention of their staff, and whether there are other asylum seeking women in similar situations who may be struggling to navigate such a cumbersome and slow system without additional help and with little or no knowledge of the English language.

Delays and gaps in provision such as the ones highlighted can have a huge impact on the health and wellbeing of mothers and, importantly, of their children, as Home Office support is the only form of provision they can rely on. NHS employee states:

"They're not entitled to the 'Healthy Start' like the generic population. So if [the woman] cannot breast feed, how can they pay for that formula? Because they're not entitled to the Healthy Start which would give you vouchers to go and get the formula. So... things like that. It's shocking"

(NHS employee)

Four out of the 15 women we interviewed had experienced destitution and homelessness at some point during their pregnancy. This suggests that the risk of extreme poverty and homelessness is a real and not an uncommon occurrence.



Daisy

Daisy was homeless during the first part of her pregnancy. Her asylum claim had been refused and she did not have access to any form of support. She felt her life "was going nowhere" and was very depressed, a feeling made worse by the suspicion she may be pregnant. Following an attempted suicide, Daisy called for help and was taken to hospital, where her pregnancy was confirmed. The hospital where she was being cared for put her in touch with the Council homeless service but, she adds "they couldn't do anything because I didn't have papers". The hospital then rang volunteer support agencies who managed to house her with a family. She moved to a different family when she was 26 weeks pregnant as the couple she was staying with were going away for an extended period of time. She had a right to support at 35 weeks, but delays meant that she did not receive Home Office accommodation until she had given birth, and only following the midwife's intervention, as Daisy and her newborn baby could not otherwise be discharged. All throughout her pregnancy Daisy had no financial support and had to rely on food-banks and financial support from charities.

Third sector organisations recognise that there is currently a gap in support for pregnant refused asylum seeking women. While they qualify for Section 4 support if at risk of destitution, this cannot be accessed until 6 weeks prior to the estimated due date. This means that for several months of their pregnancy refused asylum seekers have no access to money or housing. This leaves women open to exploitation and violence from people who are ostensibly ‘helping’ them in exchange for sexual favours or domestic servitude (as was the case for Daisy).

Understandably, none of the women we spoke to denounced this directly. However, three of the women mentioned staying with people they met while they had no support, and talked about male ‘friends’ of their hosts vising, raising concerns that sexual exploitation might indeed have occurred. A fourth woman spoke of an abusive partner who would hit her, and her (at the time) undocumented and unsupported situation may have prevented her from seeking help.

While these are speculative considerations and further research is needed to investigate more in-depth the extent to which lack of support can lead to exploitation, they are nevertheless sustained by the observations of service providers (from both third sector and statutory agencies). Moreover, they are further confirmed by the experiences of women who have publicly denounced their destitution in the position to sell sex in order to survive, as reported in The Herald Scotland, March 2016.

The former social work ‘homeless person’ team linked to the Hamish Allen¹⁰ centre dealt with a large number of destitute and homeless asylum seeking women, some of whom were pregnant and the service was able to help them with financial advice and advocating on their behalf. A restructuring of social work provision by Glasgow City Council has meant that this team was discontinued and the only provision social work can offer to destitute pregnant asylum seekers is the one offered through the ‘children and family

support’ teams, which operate in different geographical locations in Glasgow.

Gaining clear and unequivocal information about social work policy guidelines in relation to this group of vulnerable people has proven extremely challenging, and the guidance for this area seems to be patchy and ambiguous. A third sector support worker stated that they were given the impression by Social Services that the ‘children and family support’ teams will not consider an ‘appeal rights exhausted’ asylum seeker for support until the third trimester of the pregnancy. While it remains unclear whether this forms part of official guidance, it suggests an inconsistent approach to assessing for support, and ultimately leads to some refused asylum seekers in the early stages of pregnancy with no access to any form of public support.

Discrimination and poor treatment

Many of the women we spoke to highlighted episodes of discrimination and poor treatment. For most women this was experienced outside the house, in the neighbourhood or in public places such as shops.

“[An asylum seeker told me:] ‘We didn’t tell anybody we’re asylum seekers’ [...] He feels ashamed of that stigma”

(NHS employee)

For some, poor treatment also came from service providers and from a general awareness, quite evident in almost all the participants of public views on migrants and asylum seekers as scroungers and a burden on the health service. While NHS staff were widely praised and the overwhelming majority of women had a very positive experience, a few encountered less than helpful GPs or nurses.

¹⁰ This is Glasgow City Council homeless service.

They'll say 'what's your name?' and they put you on hold. And then the next thing I know ... bang, they'll slam the phone on my face [...] and then when I call back, call back, call back, nobody picks up the phone. Sometimes you can call for an hour and nobody picks up the phone [...] And you know you can't report them [...] if you do O&S can blacklist your name if your name is given to them as someone who has raised a complaint [...] So... it's like you're in a tight corner and you can't move. So lately we've sort of given up calling them and we just keep trying to look for cash to get where we need to go. And if it's a journey we can't afford, I try to call them"

(Chrystal)

Orchard and Shipman, the Home Office housing provider was referred to by most women – but also by several service providers – as particularly insensitive and unresponsive to the women's needs. Getting hold of Orchard and Shipman's staff over the phone, several of them said, could take many hours, often days. As the women are completely dependent on this service for their house repairs but also for other services such as taxis to and from hospital for all hospital appointments – to which people on Section 4 support are entitled as the Azure card does not allow them to buy public transport tickets – the long waiting can be very stressful.

Several women resorted to have one of the charities' representatives to ring up on their behalf as they were convinced that Orchard and Shipman were ignoring their calls on purpose.

Coral

Coral tone of voice is assured and assertive. While she needs an interpreter to communicate with us, the fact that she is an educated woman and that she used to be a professional in her country of origin is evident from her general demeanour and her deliberate manners. Her story is one of imprisonment and violence and she fled to save her life. She is undergoing therapy for depression and to heal the psychological scars left by the treatment to which she was subjected before fleeing.

She now has a new baby and is waiting to hear whether she will be granted refugee status. She has ambitions and drive. However, when recalling her treatment by an Orchard and Shipman representative, she breaks down in tears. She says that when she first arrived she was appalled by the way she was treated and spoken to. Through the interpreter, she tells us "I didn't feel myself. I remember the time when I was in hospital [...] the way I was spoken to [by the Orchard and Shipman representative] it was as though I was nothing. Just because I requested asylum it doesn't mean that I'm nothing".

"If I need any information about financial support I will go to the British Red Cross and they will help me fill in the forms"

(Hope)

“It’s very difficult [to get hold of O&S]. And if it’s difficult for me, who is confident and English speaking, I can only imagine what it’s like for some of our patients [...] I mean sometimes they are great, they’re very helpful and accommodating. But sometimes they can be very difficult to deal with. But we need to deal with them because they are the link with the HO [...] so we need to foster that relationship and make sure it works well”

(NHS employee)

Knowing entitlements/where to go for information

The women we spoke to had, for the most part, found their way to support either directly through the NHS and/or through one of the voluntary sector organisations. The information and advocacy these agencies provided is vital to the women. Without it, many of them repeated, they would be lost.

Asylum seeking women are almost invariably very happy with the care they received from health professionals. As the staff from the Asylum Health Bridging team explained, as well as a strict policy of giving all patients the best possible treatment regardless of their background, in Glasgow the NHS has a dedicated service which has built a huge wealth of knowledge and understanding

on what is a hugely complicated area of rights and entitlements. Midwife services in particular were praised widely by both asylum seekers and other service providers, as midwives go much further than their job requires and take on roles of advocacy and

support, helping with paperwork, contacting the home office etc.

“And when I get paranoid [the midwife] calms me down [...]. She is trained for my kind of situation”

(Daisy)

The women also praised the help they received from the voluntary sector and there seems to be quite a positive interaction between health services and third sector agencies. Some of the women we spoke to would have been left destitute had they not been alerted to the existence of help from the voluntary sector, often having been put in touch with a particular organisation by other organisations or by health professionals. The charity Migrant Help, which won the Home Office tender to provide information and support to dispersed asylum seekers, was referred to as a port of call by a minority of women. Most of them, however, had been frustrated in their attempts to contact Migrant Help when in need, as they mostly operate via telephone and are not always ready to respond to a call. As a consequence, for most of the women interviewed third sector services, (such as, for example, the BRC Mums service, Positive Action in Housing, or the Scottish Refugee Council) are the first port of call whenever in need of help or of information.



Photo © Simon Rawles

“Phoning MH can be very lengthy. We may help clients to call MH, but this can take up the whole visit. The helpline is meant to be a free phone line but, [...] if women run out of credit, they cannot call even if the helpline is free.”

(Voluntary sector employee)

All women are given written information in English by the housing provider about the services available to them upon arrival at their dispersal accommodation. However, this is a time when women are confused, scared, and

when they struggle to make sense of what is a very complex, support system. Because they are pregnant, however, they are put in touch with health services which are then able to help them gain access to other forms of support and sources of information. When this does not happen, as was the case for a few of the participants, it may take a long time before the women gain access to the help they need.

A lack of information and gaps in linking between providers can mean that a woman is not seen for appropriate care until such time as her pregnancy is noted by other services. Orchard and Shipman should alert maternity services when they house pregnant asylum seekers. While this usually works well, there are cases when a pregnant woman can be missed out:

“Not so long ago we received a phone call from social work saying this person is seeking asylum, is pregnant, do you know them? And we didn’t. So you go off and be a bit of an investigator, and indeed we should have known about them and it’s one of these things, we weren’t told, so...”

(NHS employee)

The asylum process

Half of the women interviewed spoke of the tension, anxiety and fear experienced as a consequence of the asylum process and the indecision and constant threat this represents. Some women often broke down in tears during the interview, and always as a consequence of having to think about their situation to explain it to the researcher. Serious mental health issues appear to be relatively common, and several of the women have or are experiencing depression and are receiving counselling as a consequence.

“It’s very, very hard for me... [starts crying] because... I’m worried about the Home Office. I’m worried about my country... because my children face a lot in that country... and they are very small... I told them that I didn’t bother about myself... I worry about my children [cries]. I don’t want them to die.”

(Poppy)

One woman also talked about her attempted suicide when desperation about her situation was too much to bear. Another woman was threatened with detention when pregnant because she failed to sign on at the Home Office headquarters, despite the fact that she had previously been told that she did not need to anymore (women are not required to report to the Home Office 6 weeks before and after the baby’s birth). Curt or even rude treatment by Home Office staff or by staff of the Home Office’s housing provider, uncertainty over one’s future, fear of being returned to countries they have reason to be scared to go back to, lack of control over one’s life, loneliness and isolation are all consequences of the asylum process which have a tremendous negative impact on women’s wellbeing. The resulting mental distress cannot fail to have repercussions on the women’s health but also on that of their babies and of any other children they may have.

“The fear is really high, and the stress... because they still have that fear of being detained or deported at any time. And we’ve had, over the years, people who are in the middle of the process [...] they appealed and they’ve been detained and taken, so people are scared. And when they are failed they are still going through that appeal process, so fear is still high... you know, high stress levels in that family”

(NHS employee)

“The standard of property that they are giving is not liveable, you know. And they’ve got so much money”

(Voluntary sector employee)



Housing

This was the most common practical complaint for the women interviewed and also a significant issue for some of the service providers. Dispersal accommodation is provided by the private subcontractor Orchard & Shipman on behalf of the Home Office. Orchard & Shipman also alert services to new arrivals. Moreover, in the case of pregnant women on Section 4 cashless support, O&S is required to provide transport to pregnant women to/from hospital appointments as well as other household items for the baby.¹¹

However, a substantial number of participants complained about the state of the accommodation provided and/or had experienced multiple moves due to poor standards. Several of the service providers had to make complaints to O&S on behalf of the women to improve the state of a particular accommodation and/or furnishings. Several women complained about not being able to speak to O&S when needed and of having to spend hours and days on the phone without being able to get through to a representative. In these cases the women had to resort to alerting a service provider so they could advocate on their behalf.

“This woman is pregnant. She’s here from [country withheld]. She didn’t know what to expect, what standards are, what was normal, what wasn’t... I’ve never seen anything like it. There was a 3-piece-suite... someone had been... using it as a toilet. I mean, there’s nothing else to say.

The thing was drenched in urine, drenched in urine. The housing officer had passed that this place was fit for the woman. I looked at the mattress. There was blood and stains on the mattress. I actually collected about 6 different types of beetles. The whole place was infested”

(Local authority employee)

O&S employees visit asylum seekers staying in their accommodations once a month. While this ostensibly is also to check on the individuals’ wellbeing, in the experience of the women we spoke to this was a visit to check the state of the accommodation. However, when complaints were made during these visits, they appear not to have been followed up until a service provider intervened, sometimes not even after these interventions.

“O&S have not been great to deal with. I’ve had families in some really dreadful housing conditions, and try to phone them, and you get through to somebody and they’re ‘oh yeah, yeah, we’ll fix it’ and then no. No, there is no care”

(NHS employee)

¹¹ According to the Home Office requirements: “The Provider shall provide, where reasonably appropriate, childcare equipment including cots and high chairs, and ensure that sterilisation equipment is available for children under the age of one year.”

The state of carpets preoccupied several of the women with young babies who were about to crawl and spending quite a lot of time on the floor. Living in a dirty, cramped house meant that many of them were not feeling able to relax and feel at home. Several lived on upper floors, which caused difficulties when trying to carry a baby, a buggy and bags of shopping up several flights of stairs.

Azure card

The women on Section 4 support criticised quite forcefully the cashless system. While keen to stress how grateful they are for the support they receive, the fact that the card can only be used in a few major stores is a

real challenge for pregnant asylum seekers and for those with new-borns and young children. The Azure card does not allow them to buy from local shops, which are often cheaper than the big chain stores; it means that buying small quantities of food (and halal food in particular) is very difficult for them; and they cannot treat a child to an ice-cream or a bag of sweeties when out. Having to argue with check-out staff in supermarkets over whether or not an item can be purchased on an Azure card (including top up vouchers for a mobile phone) while other customers look on is a humiliating experience a few of the women talked about.



"I went to Asda and I bought the blanket and there was a big queue and [the checkout person] said 'No you can't buy the blanket' I said 'Why I can't buy the blanket?' 'You're not allowed to buy a blanket on an Azure card' 'Yes I am' and there's a big queue, everyone is looking at me. 'No you're not allowed' 'Yes I am' and then she called the manager and

the manager says the same. So I was not able to buy it, not that time [...] but everyone is looking at me that I cannot buy a blanket, so that's a shame as well"

(Amber)

"Sometimes you have to show them the paper, because it says on it that you can get the top-up, but sometimes they say 'Oh, you can't'"

(Margaret)

By far the most common complaint, however, is the fact that the Azure card cannot be used on public transport, leaving the women stranded and unable to move around the city freely and when they need to. This was a particular issue for women at the later stages of pregnancy, who had to walk everywhere, including for antenatal check-ups or doctor's appointments. Occasionally,

volunteer organisations help women with travel expenses. However, more often women need to borrow money from someone if they have to travel for an emergency appointment. Finding the bus or taxi fare can be difficult because most asylum seeking women move within small social circles, and because many of the people they know may be in similar situations. The inability to travel also limits quite substantially women's and babies' opportunities to socialise and to build networks of informal support, with consequent negative repercussions on mental health and the family's wellbeing.

"I've got a lady just now, asylum seeker, up in XX, five months pregnant, on vouchers [...] and they've been on vouchers for four years. And when the wee one was born they were told they would go to cash payment, but no, they're still on vouchers. Now this is baby number two... so from XX she's supposed to walk to the Southern General for antenatal appointments. She's already missed a few appointments because she didn't have... you know, they rely on friends to give them the bus fare money..."

(NHS employee)

Language and interpreting

More than half of the women we spoke to did so via an interpreter. For these women not understanding English is an added difficulty at an already challenging time, as most do not have partners or family nearby to help them understand what is happening and what to expect during their pregnancy. While it seemed that for most hospital appointments interpreting was available (albeit sometimes over the phone) the language support they received appears to be a bit patchy.

Two of the women reported giving birth without an interpreter and said they had been concerned and worried because they could not understand what was happening to them and whether all was going well. This may have been due to the unpredictable nature of the onset of labour and one of the women said the on the day following the baby's birth the doctor made sure that an interpreter was present as they explained to her what to do. However, a third woman said that she only had an interpreter with her during ultrasound scans, and that for all other checks (e.g. checking the baby's heartbeat, her own temperature, etc.) there was no interpreter available. When asked how her experience could have been improved, she said

"If I had another baby I would like support with interpreters all the time when I have checks, not only when I have scans"

(Rose)

Two of the women also reported being told by their GPs to contact a service they needed via phone to make an appointment. The women were given a leaflet with a phone number on, but no help to make a call they could not make because of language barriers. The lack of understanding of their language needs was in both cases related to being perceived as a burden by the specific GP practice, and one of the women also said that the GP had

prescribed her a medication that was not suitable for a pregnant woman, something the chemist noticed and rectified with the practice.

Being treated less favourably because of their (perceived) inability to speak English was something that even women who could understand English encountered, and which added distress at a time when they felt particularly vulnerable:

"The people look at you as though you're a different race [starts crying]. Sorry... [...] In some hospital... and in some GP as well [cries]. If you go to hospital, right, like at the Princess Royal, it feels that someone looks at you [and thinks] you're [nationality withdrawn]. I still remember... I don't know whether she was a midwife or a nurse, but she said 'Oh, come on, she's [nationality withdrawn], she can stay outside'. She doesn't know I can understand English [...]"

(Lilly)

Information on entitlements, the paperwork that needs to be filled in to receive support, and letters from the hospital or the Home Office are all in English and the women have to rely on others to translate these for them. Three women took advantage of our presence and of that of an interpreter to ask for help with documents they had received but they did not understand. It is unclear what they would have done had we not been there. As a voluntary sector employee told us:

“Language is a very big barrier, because it causes too much trouble. And the body language... People pick up more on body language when they do not speak (much) English. Also, there are times when they may just say ‘yes’ to everything. If you’re talking to someone and they say ‘yes, yes’ you think that they can understand everything, and you just leave her to go away”

(Voluntary sector employee)

Social work support

The social workers who dealt with asylum seeking women (incl. pregnant) – as they were linked to the H. Allen Centre Asylum Services - complained about their expertise being wasted and their role not clearly replaced in the restructuring of the service by Glasgow City Council. Their concern was that the women are now referred to the Children and Family teams of the area where they are housed, but that these teams may not fully understand their specific situation and thus not offer adequate support.

“We’ve not been asked to filter that experience down or share that practice. So now with regard to children and families it will go to the Children and Families SW team and there are three sectors: North, West, East and South. And I’m sure those teams will have hit the

ground running. But I would imagine that some of them will be led by the HO rather than where we had got to, where we were able to kind of [advocate]”

(Local authority employee)

Some women interviewed received a lot of help from the above service at the Hamish Allen Centre (financial support, emergency accommodation, help with paperwork, travel, etc.) although from the interviews gathered it is unclear whether they were assisted on the grounds of their being destitute asylum seekers or whether further elements of vulnerability (e.g. having been trafficked) needed also to be present to trigger this service support. Regardless, whether the fact that this service has now been dismantled means less help is available for other women in similar situations is not clear. This help is especially needed if there is, as it would appear, a time period in which the women do not ordinarily receive support via social work and are not getting either section 95 or section 4 support from the HO, resulting in them experiencing destitution and homelessness before the 6-month mark in their pregnancy unless the voluntary sector intervenes.

Moreover, in practice some social work teams appear to question the rights and entitlements and to take on a role of gatekeepers on the HO behalf. They appear to worry more about the ‘no recourse to public funds’ clauses than being aware of the women’s specific situations. A marked difference between NHS staff and SW staff was noted by some respondents, with the former prioritising the women at all times, while the latter need to work to strict budgets which can leave some very vulnerable people without support. This may lead to a conflict of interest as a result of the pressures on Social Work budgets in providing financial support and

accommodation to people who don't have a clear legal right to support, which may be at odds with upholding their obligations in line with the Convention on the Elimination of All Forms of Discrimination against Women.

"They didn't really provide any support to that person - they said that the woman could walk to their office to pick up a food voucher but she wasn't well enough to walk to their office and had no money for transport. You felt that they were blaming that person for not being able to provide for that child, but without solving the problem..."

(Voluntary sector employee)

"It felt at times that the Home Office were asking us to ask people about bank accounts. Really, that's not our role, and that felt compromising and... tricky"

(Local authority employee)

As outlined in the earlier section of this report exploring the care needs and duties of local authorities, a legal opinion was sought which opined that a local authority, as a public body has a duty to prevent a breach of a person's human rights, even in cases where there is restrictions on the person's eligibility for support due to their immigration status.

In the opinion of Janys M Scott QC in cases where a care need arises the local authority should not wait for a request for an assessment, the duty to assess should be triggered by awareness of potential need. Furthermore, in order to comply with the obligations of article 3 and 8 of the European Convention of Human Rights which bear upon them, they should assess to ensure that their decision to provide or not provide support is Convention compliant.

A human rights assessment should be the lead assessment for such purposes, however as stated previously, there does not appear to be any standard Scottish policy, guidance or form in place. In England the No Recourse to Public Funds Network has devised this to assist local authorities in England with this process.

While the threshold that needs to be met before services can be provided is high, it is the case that many of the women in this category are in vulnerable positions which may be forcing them into situations which were considered in the Limbuela case.

In these cases, the local authority should prioritise preventing a breach of the women's Convention rights over the "No recourse to public funds" clauses. In practice, it remains unclear whether this approach to assessing the needs of pregnant women in this category is consistently applied.

Recommendations



Recommendations

This report has sought to explore the experiences of pregnant refugee and asylum seeking women in Scotland. It has highlighted the support that women in this category draw on and identified a number of gaps. It explored the challenges that pregnant refugee and asylum seeking women face throughout the term of the pregnancy and post-natal period.

It is clear from the findings of the study that there are a number of improvements that should be made to ensure that women receive adequate and holistic support, to enable them to have a healthy, safe pregnancies and a safe and secure home for their new baby.

We believe that the following recommendations would improve the situation for pregnant refugee and asylum seeking women.

Home Office

1. Provide adequate support that includes a minimum of Section 95 to all pregnant women, regardless of their immigration status, throughout the term of their pregnancy to prevent destitution.
2. Set asylum support at a level which ensures the basic needs of a pregnant woman can be met, this level should be protected for the future.
3. Review all Home Office policies, procedures and guidance through the lens of pregnancy to ensure they appropriately meet the specific needs of pregnant women.
4. Consider the effect that the asylum process is having on a pregnant woman and make suitable adjustments to prevent any negative impact on the woman's mental health and wellbeing during pregnancy.
5. Ensure the provision of childcare and the ability to change reporting requirements for women who have children or are pregnant is appropriately communicated and consistently available.

6. Simplify and consolidate processes to apply for enhancements to support and maternity grants to avoid complexity, duplication and administrative errors which prevent and delay the delivery of essential financial support.
7. Improve the process for covering expenses for antenatal appointments to avoid women having to apply for expenses for every scheduled and regular appointment.
8. Backdate enhancements to financial support to the date of birth of the child and not the date the application was submitted.
9. Reflect the importance of building social connections following the birth of a child in the type of support a new mother receives and appropriately increase the level of support to enable her to engage in social activities.
10. Support pregnant women to fully understand and access their rights and entitlements.
11. Disaggregate data by country and dispersal area to assist with the planning and delivery of local services and community support.

Scottish Government

12. Develop a Scottish approach to human rights assessments for people with no recourse to public funds to ensure a clear and consistent approach to human rights assessments in Scotland which fits with Scotland's National Action Plan for Human Rights.
13. Ensure that the specific needs of pregnant refugee and asylum seeking women are reflected in the next New Scots Refugee Integration Strategy in order to build capacity to respond to the emotional, physical and mental health needs of this group.

14. Ensure that pregnant refugee and asylum seeking women have adequate practical and emotional support throughout their pregnancy to assist them to access their full rights and entitlements and provide emotional support during the ante and post-natal period.
15. Consider establishing a Crisis Fund to provide essential support to pregnant women who have needs arising from their pregnancy to encourage a safe and healthy pregnancy.
21. Accommodation standards should meet the standards of the Scottish Quality Housing Standard.
22. Housing that is allocated to pregnant women should be suitable for their needs. If a registered professional, for example a health visitor or social worker, requests a change of accommodation this should be treated as a priority and alternative more suitable accommodation should be identified.
23. The pregnancy should be considered when arranging accommodation for the woman and women should not be placed in accommodation which will be overcrowded when their baby arrives.

Local authorities

16. Undertake clear, consistent and transparent human rights assessments for all pregnant women who present requiring assistance, particularly those who are destitute to ensure decisions relating to support are Convention compliant.
17. Ensure that support in relation to children is assessed with the best interests of the child at the heart, and that children have access to appropriate housing, healthcare and education, regardless of the status of their parent, and in line with the duties upon them in Section 22 of the Children (Scotland) Act 1995.
18. Recognise that the international obligations that bear upon public bodies require them to exercise their powers and perform their duties in so far as to prevent a breach of Convention rights, regardless of the restrictions set out in immigration legislation.

Agencies contracted and sub-contracted by the Home office

19. Ensure that information points are accessible to asylum seekers 24 hours a day and that calls are effectively logged and responded to within an appropriate time-frame.
20. Ensure that interpreters are available and that information, documents and forms are translated into the appropriate language.

NHS

24. Ensure interpreters are provided for all appointments including regular antenatal checks.
25. Improve awareness of the requirements to have an interpreter present, preferably in person, but as a minimum on the phone.
26. Ensure a face to face interpreter is always available to women during and after childbirth.

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Appendix

Summary of Janys M Scott QC Legal Opinion on Support for Pregnant Migrant Women

Prepared by Farida Elfallah

The full opinion of Janys M Scott QC is available on request by contacting the British Red Cross Communications and Advocacy team in Glasgow.

The British Red Cross sought an opinion from senior counsel Janys M Scott QC in relation to the responsibility of local authorities to provide support to pregnant migrant women in Scotland who are seeking asylum and/or have no access to public funds or cash support.

The opinion considers the duty of a Scottish local authority to promote social welfare under section 12, Social Work (Scotland) Act 1968. This provision includes a power to give assistance in cash or in kind to a particular person who is in need. [para 22] Section 12A sets out the local authority's duty regarding the assessment of the needs of individuals for whom the local authority may have a duty, or power, to provide or secure the provision of 'community care services'. [para 2]

The opinion notes that eligibility for support under section 12 is restricted by the terms of section 115 of the Immigration and Asylum Act 1999 regarding 'persons subject to immigration control', and by the terms of section 54 and schedule 3 of the Nationality, Immigration and Asylum Act 2002. Schedule 3 sets out several groups of migrants who are excluded from local authority support provision under section 12. [para 6]

Among the excluded groups specified in schedule 3 are those who are not asylum seekers and are unlawfully present in the UK; those whose asylum claims have been refused and who have failed to co-operate with removal directions; and those with dependant children whose asylum claims have been refused and who have been certified as failing to leave to UK voluntarily or putting themselves in a position to leave, once 14 days have elapsed since receiving a copy of the certificate. [para 6]

As counsel notes, however:

These provisions do not prevent the exercise of a power or performance of a duty if this is necessary for avoiding a breach of the person's rights under the European Convention on Human Rights. [para 6]

The opinion also considers the duty of a Scottish local authority to promote the welfare of children in need under section 22 of the Children (Scotland) Act 1995 and the relevant power included within that provision to promote the upbringing of children by their families by providing services appropriate to the children's needs, which may include assistance in kind, or in exceptional circumstances, in cash. [para 7-8]

Importantly, it is observed that the exclusions on account of immigration status set out in schedule 3 of the 2002 Act do not apply to prevent the provision of support or assistance to a child, in line with the Secretary of State's duty to have regard to the need to safeguard and promote the welfare of children in the UK in exercising immigration and asylum functions, in terms of section 55 of the Borders, Citizenship and Immigration Act 2009. [para 8]

The opinion goes on to consider the framework for support provided to asylum seekers under section 95 and section 4 of the Immigration and Asylum Act 1999 and relevant legal challenges which have been taken in this area. [para 9-17]

The opinion then considers the development of a body of case law, primarily English cases, which deal with the complicated relationship between the duties of local authorities to individuals with care needs and the duties of the Secretary of State. The applicability, or otherwise, of the reasoning set out in the English cases within the Scottish context is considered. [para 18-26] It is noted that a pregnant woman subject to immigration control in Scotland can access section 12 assistance (if she is eligible) so long as her need has arisen from pregnancy, rather than solely from destitution. [para 22]

In relation to pregnant women and nursing mothers, it is noted that the Scottish position regarding section 12 assistance is similar to the provisions of section 17 of the Children Act 1989 (an English provision regarding local authority services for children in need) and section 22 of the Children (Scotland) Act 1995 i.e. The local authority is obliged to assess needs and decide whether the needs call for provision of services. [para 23]

Receipt of support under section 12 will however result in withdrawal of support from the Secretary of State under section 95 or section 4 of the Immigration and Nationality Act 1999 if the support results in the woman no longer being destitute [para 22 and 26 and 27].

It is also noted that while a pregnant woman cannot ask a local authority to assess the needs of her unborn child, the fact that a child may, when born, have needs is potentially relevant under section 12 of the Social Work (Scotland) Act 1968. [para 26]

The opinion then goes on to explore the important human rights 'safety net' provided in paragraph 3 of schedule 3 of the Nationality, Immigration and Asylum Act 2002 for those groups excluded from local authority assistance by schedule 3 on account of their immigration status.

Paragraph 29 of counsel's opinion explains:

Both the Secretary of State and local authorities are public authorities within the Human Rights Act 1998 and should not act in a way that is incompatible with rights under the European Convention on Human Rights, unless bound to do so by primary legislation (1998 Act, section 6). This basic responsibility underlies paragraph 3 of the third schedule to the Nationality, Immigration and Asylum Act 2002. It provides a safety net for the groups mentioned at paragraph [6] above and ensures that neither central, nor local, government is obliged by law to violate their Convention duties. Where a duty to provide assistance under section 12 of the Social Work (Scotland) Act 1968 or section 22 of the Children (Scotland) Act 1995 is generally excluded by section 54 and paragraph 1 of Schedule 3, the exclusion will not apply if the Convention rights of a pregnant woman would thereby be breached.

The opinion then considers relevant case law where human rights arguments have been put forward in respect of local authorities' duties towards asylum seekers. In particular, the position of pregnant women and women and who have just given birth is considered and it is noted that Article 3 and Article 8 of the Convention will be most relevant here. [para 30]

Counsel observes regarding a number of cases dealing with Article 3 arguments: *It was implicit in these cases that the treatment of women may give rise to exceptional circumstances.* [para 34]

Counsel then refers to the comments of Mitting J in *(Gnezele) v Leeds City Council* [2007] EWHC 3275 and notes:

The decision in that case as to which authority is responsible for avoiding a violation of article 3 does not apply in Scotland... but the reasoning encapsulates the case law where it is accepted that article 3 applies to require provision of accommodation and necessities for pregnant women and women who have recently given birth. [para 34]

Counsel then turns to consider case law dealing with Article 8 arguments in respect of both private and family life. In particular, regarding requests for support for a family as a whole, she notes:

In R (G) v Barnet London Borough Council [2004] 2 AC 208 the House of Lords rejected a claim by parents that provision of accommodation for a child necessarily implied provision of accommodation for the parent. However, if a child were provided with accommodation under the Children (Scotland) Act 1995 separately from his or her parent support, issues may arise in relation to the right to respect for family life in terms of article 8.[para 35]

Counsel goes on to observe the following regarding the Article 3 and Article 8 case law:

This case law is significant in relation to support for pregnant women. Pregnant women are particularly vulnerable. If in this condition the treatment they receive as a result of their immigration status forces them into abusive relationships, or prostitution this brings them into the type of situation considered by the House of Lords in the Limbuela case, or if their health or mental stability is threatened, that is capable of giving rise to issues under article 3 or article 8. Separation from support structures is relevant to article 8, as in De Almeida. There can be no justification for a violation of article 3. In article 8 cases a public authority is required to justify a failure to assist that affects private or family life, considering whether the refusal of support is proportionate. [para 38]

The opinion then considers the terms of Article 12(2) of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, which provides that states parties: ‘shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation’.

It is noted that CEDAW may ‘serve as an aid to the issues arising under article 3 and 8 of the European Convention on Human Rights, for the reasons expressed by Baroness Hale in *Limbuela*’ [para 39]

Human rights assessments

The opinion observes that the relevant case law ‘refers repeatedly to ‘human rights assessments’ carried out by English local authorities’, which are ‘clearly seen as important tools for local authorities upon whom the obligations of article 3 and 8 of the Convention bear.’ Reference is made to the practice guidance for English local authorities produced by the NRPF Network, and their standard Human Rights Assessment Form. [para 40]

The opinion then notes:

In this context the Nationality Immigration and Asylum Act 2002, schedule 3 paragraph 3 applies to Scotland as well as England and so Scottish local authorities are not prevented from exercising their powers or performing their duties in so far as necessary to avoid a breach of a person’s Convention rights. The relevant services to pregnant women will be provided under section 12 of the Social Work (Scotland) Act 1968. Where it appears that a person may be in need of ‘community care services’ the Scottish local authority is required to make an assessment under section 12A of the person’s needs and whether those needs call for the provision of any such services. The duty to assess is therefore triggered by awareness of potential need. The local authority should not wait for a request for an assessment. They require to make assessments in order to ensure that

they act in a manner which is Convention compliant. There does not however appear to be any form adapted for the Scottish context, to assist Scottish local authorities in complying with their Convention duties. [para 41]

In relation to remedies, the opinion notes at paragraph 40:

Failure to have regard to Convention rights may be addressed in a number of ways... A decision by a local authority in relation to provision, or non-provision of support under section 12 of the Social Work (Scotland) Act 1968 that violates the article 3 or article 8 rights of a pregnant woman would be open to judicial review. It is also possible to claim damages under sections 7 and 8 of the Human Rights Act 1998 in the event of injury caused by an act that is unlawful because it is in violation of Convention rights. [para 42]

Immigration Act 2016

The opinion then briefly considers forthcoming changes to section 4 support under the Immigration Act 2016. [para 43-44] It is noted that section 4 support will be replaced with support under a new section 95A of the Immigration and Asylum Act 1999, the full effects of which are not yet known. Regarding local authority support, it is noted:

Schedule 12 of the 2016 Act sets out more detailed restrictions on support that may be offered by local authorities in England, but there are no provisions changing the legislation relating to support by Scottish local authorities as this is likely in the future to be treated as a devolved matter. [para 43]

Practical Recommendations

In the opinion of Janys Scott QC local authorities in Scotland are able to provide assistance to pregnant migrant women in order to prevent a breach of their rights under the European Convention of Human Rights.

There is however no standard process in Scotland to assist local authorities to carry out assessments if requested.

Furthermore, the law is complex. It is factually specific and how the responsibilities of a local authority relate to the regime of support provided by the Home Office is unclear. Therefore, early legal advice should be undertaken.

Assisting pregnant asylum seeking women to access support from a local authority

A person/agency supporting a pregnant migrant woman may be able to help her by:-

- > Considering whether she may be in need of local authority assistance and checking whether she wishes such assistance, and if so;
- > Considering whether she is eligible for support and assistance from the Home Office and whether this support and assistance is sufficient;
- > If not, considering whether she would usually be eligible for section 12 assistance (or section 22 assistance, if she has another child) or whether she falls within one of the excluded groups under schedule 3 of the 2002 Act due to her immigration status and therefore may request a human rights assessment;
- > Advising her to seek legal advice on her immigration and support position as soon as possible, if it appears that she falls within one of the excluded groups or her immigration status is unclear.
- > Assisting her to contact the local authority to request an assessment of her needs (where possible, initial legal advice should be sought prior to making such requests and/or the woman's immigration solicitor should be informed in advance that such assistance will be sought, unless the need is urgent)

Challenging a local authority failure to provide support to pregnant asylum seeking women

If a request for an assessment and/or support from a local authority is made by or on behalf of a pregnant migrant woman and the request is being refused or ignored, the person/ agency supporting her may be able to help her by:-

- > Requests for assessments/support should be made in writing and evidence kept of these requests;
- > Asking for any decisions regarding refusal of assessment to be provided in writing;
- > Remember that a human rights assessment can be requested if the local authority states that she is excluded from support due to her immigration status;
- > Remember that the accommodation of a child without allowing the parent accommodation may be a violation of human rights law;
- > If the assessment is carried out, ask for a copy of the assessment to be provided;
- > Advising the woman to seek legal advice as soon as possible, if she wishes to explore whether it may be possible to challenge the failure of a local authority to carry out an assessment/provide sufficient support.

Note: The remedy for challenging a local authority failure to provide support is likely to be judicial review. There are tight timescales for raising a judicial review action - seek advice early!

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